

# **AGREEMENT BETWEEN THE R.EPUBLIC OF CROATIA AND THE REPUBLIC OF TURKEY CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Republic of Croatia and the Republic of Turkey, hereinafter referred as the Contracting Parties.

Desiring to promote greater economic cooperation between them, particularly with respect to investments by investors of one Contracting party in the territory of the other contracting Party.

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of capital and technology and the economic developments of the Contracting Parties;

Agreeing that fair and equitable treatment of investments is desirable in order to maintain a stable framework for investment and maximum effective utilization of economic resource, and

Having resolved to conclude an agreement concerning the encouragement and reciprocal protection of investments, Hereby agree as follows:

## **Article I. Definitions**

For the purpose of this Agreement;

1. The term "investor" means: (a) Natural persons deriving their status as nationals of either Contracting party according to its applicable law,

(b) Corporations, firms of business associations incorporated or constituted under the law in force of either of the Contracting Parties and having their headquarters in the territory of that Contracting Party.

2. The term "investment", in conformity with the hosting Party's laws and regulations, shall include every kind of asset in particular, but not exclusively: (a) Shares, stocks or any other form of participation in companies.

(b) Returns reinvested, claims to money or any other rights to legitimate performance having financial value related to an investment.

(c) Movable and immovable property, as well as any other rights in rem such as mortgages, liens, pledges, and any other similar rights.

(d) Copyrights, industrial and intellectual property rights such as patents, licenses, industrial designs, technical processes, as well as trademarks, goodwill, know-how and other similar rights.

(e) Business concessions conferred by law or by contract, including concessions to search for, cultivate, extract or exploit natural resources on the territory of each Contracting Party as defined hereafter.

3. The term "returns" means the amounts yielded by an investment and includes in particular, though not exclusively, profit, interest, and dividends.

4. The term "territory" means the in respect of either Contracting Party, territory, territorial sea as well as the maritime areas over which that Contracting Party has jurisdiction of sovereign rights for the purposes of exploring, exploiting, conserving and managing natural resources, pursuant to international law.

## **Article II. Promotion and Protection of Investments**

1. Each Contracting Party shall promote in its territory investments, by investors of the other Contracting Party and permit such investments and activities associated therewith, on a basis no less favourable than that accorded in similar situations

to investments of investors of my third country, within the framework of its laws and regulations.

2. When a Contracting Party shall have admitted an investment in its territory, it shall grant in accordance with its laws and regulations the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance.

3. Each Contracting Party shall accord to these investments, once established, treatment no less favourable than that accorded in similar situations to investments of its investors or to investments of investors of any third country, whichever is the most favourable.

4. Subject to the laws and regulations of the Contracting Parties relating to the entry, sojourn and employment of aliens:

(a) Nationals of either Contracting Party shall be permitted to enter and remain in the territory of the other Contracting Party for purposes of establishing, developing, administering or advising on the operation of an investment to which they, or an investor of the first Contracting Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources,

(b) Companies which are legally constituted under the applicable laws and regulations of one Contracting Party, and which are investments of investors of other Contracting Party, shall be permitted to engage managerial and technical personnel of their choice, regardless of nationality.

5. The provisions of this Article shall have no effect in relation to following agreements entered into by either of the Contracting Parties;

(a) Relating to any existing or future customs unions, regional economic organization or similar international agreements,

(b) Relating wholly mainly to taxation.

### **Article III. Expropriation and Compensation**

1. Investments shall not be expropriated, nationalized or subject, directly or indirectly, to measures of similar effects except for a public purpose, in a non-discriminatory manner, and upon payment of prompt, adequate and effective compensation and in accordance with due process of law and the general principles of treatment provided for in Article II of this Agreement.

2. Such compensation shall be equivalent to the market value of the expropriated investment before the expropriatory action was taken or became known. Compensation shall be paid without delay and be freely transferable as described in paragraph 2 Article IV.

3. Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war, insurrection, civil disturbance or other similar events shall be accorded by such other Contracting Party treatment not less favourable than that accorded to its own investors or to investors of any third country, whichever is the most favourable treatment, as regards any measures that Contracting Party adopts in relation to such losses.

### **Article IV. Repatriation and Transfer**

1. Each Contracting Party shall permit in good faith all transfers related to an investment to be made freely and without unreasonable delay into and out of its territory. Such transfers include:

(a) Returns,

(b) Proceeds from the sale or liquidation of all or any part of an investment,

(c) Compensation pursuant to Article III,

(d) Reimbursement and interest payments deriving from loans connection with investments,

(e) Salaries, wages and other remunerations received by the nationals of one Contracting Party who have obtained in the territory of the other Contracting Party the corresponding work permits relative to an investment,

(f) Payments arising from an investment dispute.

2. Transfers shall be made in the convertible currency in which the investment has been made or in any convertible currency at the rate of exchange in force at the date of transfer, unless otherwise agreed by the investor and the hosting

Contracting Party.

## **Article V. Subrogation**

1. If the investment of an investor of one Contracting Party is insured against non commercial risks under a system established by law, any subrogation of the insurer which stems from the terms of the insurance agreement shall be recognized by the other Contracting Party.
2. The insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.
3. Disputes between a Contracting party and an insurer shall be settled in accordance with the provisions of Article VII of this Agreement

## **Article VI. Derogation**

This agreement shall not derogate from:

- (a) Laws and regulations, administrative practices or procedures or administrative or adjudicatory decisions of either Contracting Party,
- (b) International legal obligations, or
- (c) Obligations assumed by either contracting party, including those contained in an investment agreement of an investment authorization,

That entitle investments of associated activities to treatment more favourable than that accorded by this Agreement in like situations.

## **Article VII. Settlement of Disputes between One Contracting Party and Investors of the other Contracting Party**

1. Disputes between one of the Contracting Parties and an investor of the other Contracting Party, in connection with his investment, shall be notified in writing, including a detailed information by the investor to the recipient Contracting Party of the investment. As far as possible, the investor and the concerned Contracting Party shall endeavour to settle these disputes by consultations and negotiations in good faith.
2. If these disputes cannot be settled in this way within six months following the date of the written notification mentioned in paragraph 1, the dispute can be submitted, as the investor may choose, to:
  - (a) The International Center for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes between States and Nationals of other States",
  - (b) An ad hoc court of arbitration laid down under the Arbitration Rules of procedure of the United Nations commission for International Trade Law (UNCITRAL),
  - (d) The Court of Arbitration of the Paris International Chamber of Commerce,

Provided that, if the investor concerned has brought the dispute before the courts of justice of the Contracting Party that is a party to the dispute and a final award has not been rendered within one year. 3. The arbitration award shall be based on:

- The provisions of this Agreement;
- The national law of the Contracting Party in whose territory the investment was made, including the rules relative to conflicts of law;
- The rules and universally accepted principles of international law

4. The arbitration awards shall be final and binding for all Contracting Parties in dispute. Each Contracting Party commits itself to execute the award according to its national law.

## **Article VIII. Settlement of Disputes between the Contracting Parties**

1. The Contracting Parties shall seek in good faith and a spirit of cooperation a rapid and equitable solution to my dispute between them concerning the interpretation or application of this Agreement. In this regard, the Contracting Parties agree to engage in direct and meaningful negotiations to arrive at such solutions. If the Contracting Parties cannot reach an agreement within six months after the beginning of dispute between themselves through the foregoing procedure, the dispute may be submitted, upon the request of either Contracting Party, to an arbitral tribunal of three members.
2. Within two months of receipt of a request, each Contracting Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third State. In the event either Contracting Party fails to appoint an arbitrator within the specified time, the other Contracting Party may request the President of the International Court of Justice to make the appointment.
3. If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the chairman shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.
4. If, in the cases specified under paragraphs (2) and (3) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either contracting Party, the appointment shall be made by the Vice-President, and if the Vice-President is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the most senior member of the court who is not a national of either Contracting Party.
5. The tribunal shall have three months from the date of the selection of the chairman to agree upon rules of procedure consistent with the other provisions of this Agreement. In the absence of such agreement, the tribunal shall request the President of the International Court of Justice to designate rules of procedure, taking into account generally recognized rules of international arbitral procedure.
6. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within eight months of the date of selection of the chairman, and the tribunal shall render its decision within two months after the date of the final submissions or the date of the closing of the hearings whichever is later. The arbitral tribunal shall reach its decisions, which shall be final and binding, by a majority of votes.
7. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceedings shall be paid for equally by the Contracting Parties. The tribunal may, however, at its discretion, decide that a higher proportion of the costs be paid by one of the Contracting Parties.
8. A dispute shall not be submitted to an international arbitration court under the provisions of this Article, if the same dispute has been brought before another international arbitration court under the provisions of Article VII and is still before the court. This will not impair the engagement in direct and meaningful negotiations between both Contracting Parties.

## **Article IX. Consultations and Exchange of Information**

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to consultations on the interpretation or application of this Agreement. Upon request by either contracting Party, information shall be exchanged on the impact that the laws, regulations, decisions administrative practices or procedures of policies of other contracting Party may have on investments covered by this Agreement.

## **Article X. Entering Into Force**

1. This Agreement shall enter into force on the latter date on which either Contracting Party notified the other that its internal legal requirements for the entry into force of this Agreement have been fulfilled. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2 of this Article. It shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter.
2. Either Contracting Party may, by giving one year's written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.
3. This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force when each Contracting Party has notified the other that it has completed all internal requirements for entry into force of such amendment.
4. With respect to investments made or acquired prior to the date of termination of this Agreement and to which this Agreement otherwise applies, the provisions of all of the other Articles of this Agreement shall thereafter continue to be

effective for a further period of ten years from such date of termination.

IN WITNESS WHEREOF. the respective plenipotentiaries have signed this Agreement.

Done at Zagreb on 12th February 1996, in the Croatian, Turkish, and English languages all of which are equally authentic. In case of divergence of interpretation the English text shall prevail.

FOR THE REPUBLIC OF CROATIA

FOR THE REPUBLIC OF TURKEY